



Substitute Senate Bill No. 302

Public Act No. 10-139

***AN ACT CONCERNING STATE FUNDING OF AFFORDABLE
HOUSING LOCATED IN A FIVE-HUNDRED-YEAR FLOOD PLAIN.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 25-68d of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) No state agency shall undertake an activity or a critical activity within or affecting the floodplain without first obtaining an approval or approval with conditions from the commissioner of a certification submitted in accordance with subsection (b) of this section or exemption by the commissioner from such approval or approval with conditions in accordance with subsection (d) of this section.

(b) Any state agency proposing an activity or critical activity within or affecting the floodplain shall submit to the commissioner information certifying that:

(1) The proposal will not obstruct flood flows or result in an adverse increase in flood elevations, significantly affect the storage or flood control value of the floodplains, cause an adverse increase in flood velocities, or an adverse flooding impact upon upstream, downstream or abutting properties, or pose a hazard to human life, health or

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property in the event of a base flood or base flood for a critical activity;

(2) The proposal complies with the provisions of the National Flood Insurance Program, [(44 CFR 59 et seq.)] 44 CFR 59 et seq., and any floodplain zoning requirements adopted by a municipality in the area of the proposal and the requirements for stream channel encroachment lines adopted pursuant to the provisions of section 22a-342;

(3) The agency has acquired, through public or private purchase or conveyance, easements and property in floodplains when the base flood or base flood for a critical activity is elevated above the increment authorized by the National Flood Insurance Program or the flood storage loss would cause adverse increases in such base flood flows;

(4) The proposal promotes long-term nonintensive floodplain uses and has utilities located to discourage floodplain development;

(5) The agency has considered and will use to the extent feasible flood-proofing techniques to protect new and existing structures and utility lines, will construct dikes, dams, channel alterations, seawalls, breakwaters or other structures only where there are no practical alternatives and will implement stormwater management practices in accordance with regulations adopted pursuant to section 25-68h; and

(6) The agency has flood forecasting and warning capabilities consistent with the system maintained by the National Weather Service and has a flood preparedness plan.

(c) The commissioner shall make a decision either approving, approving with conditions or rejecting a certification not later than ninety days after receipt of such certification, except that in the case of an exemption any decision shall be made ninety days after the close of the hearing. If a certification is rejected, the agency shall be entitled to a hearing in accordance with the provisions of sections 4-176e, 4-177, 4-

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177c and 4-180.

(d) Any state agency proposing an activity or critical activity within or affecting the floodplain may apply to the commissioner for exemption from the provisions of subsection (b) of this section. Such application shall include a statement of the reasons why such agency is unable to comply with said subsection and any other information the commissioner deems necessary. The commissioner, at least thirty days before approving, approving with conditions or denying any such application, shall publish once in a newspaper having a substantial circulation in the affected area notice of: (1) The name of the applicant; (2) the location and nature of the requested exemption; (3) the tentative decision on the application; and (4) additional information the commissioner deems necessary to support the decision to approve, approve with conditions or deny the application. There shall be a comment period following the public notice during which period interested persons and municipalities may submit written comments. After the comment period, the commissioner shall make a final determination to either approve the application, approve the application with conditions or deny the application. The commissioner may hold a public hearing prior to approving, approving with conditions or denying any application if in the discretion of the commissioner the public interest will be best served thereby, and the commissioner shall hold a public hearing upon receipt of a petition signed by at least twenty-five persons. Notice of such hearing shall be published at least thirty days before the hearing in a newspaper having a substantial circulation in the area affected. The commissioner may approve or approve with conditions such exemption if the commissioner determines that (A) the agency has shown that the activity or critical activity is in the public interest, will not injure persons or damage property in the area of such activity or critical activity, complies with the provisions of the National Flood Insurance Program, and, in the case of a loan or grant, the recipient of the loan or

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grant has been informed that increased flood insurance premiums may result from the activity or critical activity. An activity shall be considered to be in the public interest if it is a development subject to environmental remediation regulations adopted pursuant to section 22a-133k and is in or adjacent to an area identified as a regional center, neighborhood conservation area, growth area or rural community center in the State Plan of Conservation and Development pursuant to chapter 297, or (B) in the case of a flood control project, such project meets the criteria of subparagraph (A) of this subdivision and is more cost-effective to the state and municipalities than a project constructed to or above the base flood or base flood for a critical activity. Following approval for exemption for a flood control project, the commissioner shall provide notice of the hazards of a flood greater than the capacity of the project design to each member of the legislature whose district will be affected by the project and to the following agencies and officials in the area to be protected by the project: The planning and zoning commission, the inland wetlands agency, the director of civil defense, the conservation commission, the fire department, the police department, the chief elected official and each member of the legislative body, and the regional planning agency. Notice shall be given to the general public by publication in a newspaper of general circulation in each municipality in the area in which the project is to be located.

(e) The use of a mill that is located on a brownfield, as defined in section 32-9kk, shall be exempt from the certification requirements of subdivision (4) of subsection (b) of this section, provided the agency demonstrates: (1) The activity is subject to the environmental remediation requirements of the regulations adopted pursuant to section 22a-133k, (2) the activity is limited to the areas of the property where historical mill uses occurred, (3) any critical activity is above the [five hundred year] five-hundred-year flood elevation, and (4) the activity complies with the provisions of the National Flood Insurance

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Program.

(f) The failure of any agency to comply with the provisions of this section or any regulations adopted pursuant to section 25-68c shall be grounds for revocation of the approval of the certification.

(g) The provisions of this section shall not apply to any proposal by the Department of Transportation or the Department of Economic and Community Development for a project within a drainage basin of less than one square mile.

(h) The provisions of subsections (a) to (d), inclusive, and (f) and (g) of this section shall not apply to the following critical activities above the one-hundred-year flood elevation that involve state funded housing reconstruction, rehabilitation or renovation, provided the state agency that provides funding for such activity certifies that it complies with the provisions of the National Flood Insurance Program and the requirements of this subsection: (1) Projects involving the renovation or rehabilitation of existing housing on the Department of Economic and Community Development's most recent affordable housing appeals list; (2) construction of minor structures to an existing building for the purpose of providing handicapped accessibility pursuant to the State Building Code; (3) construction of open decks attached to residential structures, properly anchored in accordance with the State Building Code; (4) the demolition and reconstruction of existing housing for persons and families of low and moderate income, provided there is no increase in the number of dwelling units and (A) such reconstruction is limited to the footprint of the existing foundation of the building or buildings used for such purpose, or which could be used for such purpose subsequent to reconstruction, or (B) such reconstruction is on a parcel of land where the elevation of such land is above the one-hundred-year flood elevation, provided there is no placement of fill within an adopted Federal Emergency Management Agency flood zone.

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